

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000841-ME

J.G., MOTHER¹

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE PATRICIA WALKER FITZGERALD, JUDGE
ACTION NO. 06-AD-500453

COMMONWEALTH OF KENTUCKY, CABINET
FOR HEALTH AND FAMILY SERVICES;
B.G., A CHILD; AND D.A.G., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, NICKELL and TAYLOR, Judges.

NICKELL, JUDGE: J.G., *pro se*, appeals two orders of the Jefferson Circuit Court, Family Division, entered March 26, 2007, terminating her parental rights to two children, B.G., a daughter born January 31, 2000, and D.G., a son born January 3, 2005.² For the reasons that follow, we affirm.

¹ Pursuant to the policy of the Court of Appeals, in cases involving allegations pertaining to minor children, the parties shall be referenced by their initials in an effort to protect the interests of such minor children.

² J.G. and A.G. are married and B.G. is their daughter. A.G. visited B.G. sporadically in 2005 and 2006, however, his last visit with her was May 14, 2006. D.G. was conceived during the marriage of A.G. and

J.G. is the biological mother of B.G. and D.G. On January 5, 2005, the Cabinet for Health and Family Services ("Cabinet") filed verified dependency petitions alleging both children were abused or neglected in that:

On or about January 1, 2005, [D.G.] was born to [J.G.]. Natural mother has an extensive psychiatric history with her most recent hospitalization at University of Louisville Psychiatric in early December, with a discharge date of December 8, 2004. At that time, Gretchen Cox, social worker at U of L Psychiatric, advised this worker that because of reported psychotic episodes, including a reported discussion of child sacrifices with an in-law, it is recommended that [J.G.] not be alone with any child. Sandra Datillo, social worker for University Hospital, confirmed the documentation on January 3, 2005. [J.G.] has a history of unemployment, lack of housing and poor interpersonal relationships. Natural mother has a four-year old (sic) daughter who is in the temporary custody of maternal grandmother, [C.P.]. The four year old (sic) was hospitalized at Kosair Children's hospital (sic) from approx. December 8 until 10 because of vomiting and abdominal pain. According to a report of December 9, 2004, [C.P.] reported the child had been dry heaving and had lost approximately five pounds during the three-week period prior to her hospitalization. A large bald spot was found on her scalp (also observed by affiant). In the hospital report of December 9, 2004 the maternal grandmother, [C.P.], first became aware of the problem after the child recently informed her that her hair had been cut by mother to prevent pulling. Karen Haffey, MS: Clinical

J.G. but while A.G. was deployed on active military duty. While A.G. is listed as D.G.'s legal father, he has denied paternity of the child. J.G. has named A.Z. as D.G.'s putative father. A.Z. has contacted neither the child nor the Cabinet. Both A.G. and A.Z. were before the court during the March 2007 hearing as a result of constructive service through a warning order attorney. Neither man answered the Cabinet's petition nor otherwise appeared in court to contest the Cabinet's allegations. The court's March 26, 2007, order terminated all parental rights of J.G., A.G. and A.Z. to both children. Neither A.G. nor A.Z. is a party to this appeal.

Doctoral Resident, recommended in the psychiatric evaluation that the patient's (child) behaviors are likely in response to an unstable family life, mother's behaviors, and reported physical neglect and abuse by mother. A petition on the child [B.G.] is currently before the court. Further [J.G.] has engaged in a physical altercation with her mother, [C.P.], on or about November 3, 2004. On or about this day, natural mother is also reported by [C.P.] to have kicked [B.G.] and attempted burn (sic) her with a cigarette. After the incidents, [C.P.] took a mental inquest warrant on the mother and she was admitted to University Louisville Psychiatric and was discharged on or about November 16, 2004. Biological father is unknown at this time. [J.G.] has provided names of possible fathers.

[J.G.] reported to this worker that legal father, [A.G.], has stated the (sic) he "hates the baby." Legal father has a possible history of drugs and has used corporal punishment on the four-year (sic) although he has had limited contact with her since birth.

A temporary removal hearing occurred January 13, 2005. Afterwards, the court placed D.G.³ in the temporary custody of the Cabinet; placed B.G. in the temporary custody of her maternal grandmother, C.P.; and ordered J.G. to comply with the Cabinet's case treatment plan. In February 2005, after an adjudicatory hearing, the court found both children to be abused or neglected and further found removal from J.G.'s care was necessary for their safety and well-being. The court found in relevant part:

the children's mother has a history of psychiatric problems dating to her early teens; she was first hospitalized when she was around thirteen. She was also hospitalized for a week about two years ago.

³ D.G. has been in the care and custody of the Cabinet since birth.

[J.G.] was hospitalized in October 31, 2004 on a mental inquest warrant taken by her mother and alleging lack of self care and that she was aggressive toward her and [B.G.]. At the time of her admission, she was depressed and hallucinating. She was discharged on November 16, 2004. Because she and her mother both asserted that the other had been violent and abusive, [J.G.] did not return to her home, but went to a shelter house. Two days after her release from the hospital, her estranged husband picked her up and took her to his home. During the new (sic) few weeks, he became increasingly concerned about her behavior. She talked to herself incessantly; she appeared to be talking to someone else as well. She would laugh for no apparent reason and gesture into the air. On one occasion she jumped onto a couch and threw her middle finger up into the air as if angry with someone.

During this time, [J.G.] displayed a lack of concern for [B.G.'s] welfare. On one occasion [A.G.] came home after work to discover that no one knew [B.G.'s] whereabouts. A search ensued inside and out by all but [J.G.], who sat drinking coffee and smoking a cigarette, apparently unconcerned. Finally [A.G.] contacted [J.G.'s] doctor due to his concerns over his wife's behavior. Shortly thereafter an ambulance was sent to pick her up and she was again involuntarily hospitalized. Her second admission last fall was from November 30, 2004 to December 8, 2004. According to admission records, she was admitted because noncompliant with her medications and because of bizarre behavior such as threatening to sacrifice her daughter. At the time of her discharge, hospital staff recommended that [J.G.] not be left alone with her child because of her psychotic behaviors. Court orders have required that [J.G.] have supervised contact only since the first court appearance regarding [B.G.] on November 1, 2004.

[D.G.] was born on January 1, 2005.⁴ Because of [J.G.'s] continued psychiatric problems,

⁴ Elsewhere, D.G.'s birthdate is listed as January 3, 2005.

staff recommended that she not be alone with any child; this Court accordingly removed [D.G.] from [J.G.'s] custody. [D.G.] was not placed with his sister in the grandmother's custody because of concerns that had arisen regarding the appropriateness of the grandmother's care of [B.G.]. [B.G.] has also exhibited signs of significant emotional difficulties. The Court was unable to determine whether the child would be at greater risk of harm due to the environment in the grandmother's home or by removing the child from familiar family. Accordingly, [B.G.] was not removed. However, due to significant concerns about the instability of [B.G.'s] placement, [D.G.] was placed in foster care.

[J.G.] has been diagnosed with paranoia and possible schizophrenia. Her grandmother, who lives in [C.P.'s] home, does have schizophrenia. A number of the grandmother's children were removed from her care due to her illness. She currently has dementia and is unable to care for herself. [C.P.] also cares for her father, who is partially paralyzed as a result of a stroke. [C.P.'s] husband has now moved into the home after being evicted from [J.G.'s] home, where he had been living. He is believed to have bipolar disorder although that diagnosis has not been determined. He has twice been investigated for allegations of sexual abuse of [J.G.], who was hospitalized after one such allegation. The result of the initial allegation has not been determined. Until such allegations are resolved, they present a significant concern to the court, as [he] has been one of [B.G.'s] primary caretakers. There have been multiple complaints over the years to Child Protective Services regarding allegations of neglect and abuse of [J.G.] and her sister. Some of the complaints were substantiated; at other times, even though actual neglect or abuse was not documented, investigators found [C.P.] to have difficulty with basic parenting issues. [B.G.'s] therapists have raised the concern that due to the chaos in the home at this time [C.P.] is not able to care appropriately for [B.G.] and would not be able to take on the care of an infant. For these reasons, [D.G.] was placed in foster

care. The Court left [B.G.] with her grandmother pending trial and disposition, if any, of this matter, with directions that the areas of concern are to be specifically investigated and more concrete information is to be provided the Court at the next hearing.

A.G. agreed to placement of the children outside the home in either foster care or with their grandmother. B.G. remained in the temporary custody of her grandmother until June 2005 when the court committed both children to the Cabinet.

On March 20, 2007, a trial was held to determine whether termination of parental rights was warranted. Kristen Doty, a social worker for the Cabinet, and J.G. were the only witnesses. Doty testified about the various reunification services offered to J.G. and her family. The court summarized these services in its findings of fact as:

. . . referrals to services for drug and alcohol abuse assessment and treatment, mental health assessment and counseling, household management and budgeting assistance, visitation, general social work services, assistance with obtaining subsidized housing, including counseling about the necessity for obtaining stable housing and employment, absent parent location services for the Respondent fathers when they went missing and contacts or attempted contacts with the Respondent mother and fathers so that reunification services could be made available to them. However, the Respondent parents have not availed themselves of the services provided by the Cabinet or have otherwise failed to make sufficient progress in the court-approved case treatment plan to allow for the safe return of the children to their parental custody and care. Accordingly, there is no reasonable expectation of improvement in parental care and protection considering the age of the children.

Doty went on to explain that J.G.'s mental health has been a major hurdle in reunifying the family. While J.G. has occasionally started counseling and medication, she denies having any problems and has not followed through with the plan. After two failed referrals, Seven Counties Services declined to accept her as a client for two years because J.G. denies having mental problems and has not identified treatment goals for herself. Neighbors have reported J.G. chants, wanders the halls, bangs on doors at 2:00 a.m. in search of cigarettes, and once threw a cat from a window.

J.G. testified that since the age of twelve she has been hospitalized for mental issues on five occasions with her last admission occurring in late 2004 while she was pregnant with D.G. She said she is currently seeing a physician and a clinical social worker although she is not seeking therapy for any specific reason. She stated she had previously gone to the University of Louisville for counseling but in her opinion they provided poor care. According to J.G., in 2006, Seven Counties Services told her she was fine, did not need medication, and closed her case. She testified she then went to Caritas for assessment and while they may have mentioned something to her about medication, they did not tell her she needed urgent care or hospitalization.

J.G. described herself as shy and anxious around others. She said people do not like her because she does not dress appropriately and they probably perceive her as a "smart mouth." She testified she does not feel she is as good as other

people and she does not trust her mother whom she says tries to help, but ultimately sabotages her efforts. J.G. said she loves her parents but she does not like them.

J.G. stated she completed parenting classes but admitted she has been unable to maintain housing and employment for longer than six months. Currently unemployed, she said she supports herself with a \$623.00 disability check she receives as a result of her personality disorder. She had worked at a Waffle House for a few months in early 2006 but quit when someone threatened her and B.G. She said she had also worked for a few months as a teacher's aide at an elementary school while she was in college.

In the wake of trial, the court made the following conclusions of law:

1. The children, [B.G.] and [D.G.], have been adjudged to be abused or neglected children as defined in KRS⁵ 600.020(1) by a court of competent jurisdiction. Moreover, the children . . . are found in this proceeding to be abused or neglected children . . . and it is in the best interest of the children that the parental rights of [J.G.] be terminated.
2. The Respondent [parent, J.G.], for a period of not less than six (6) months, have continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for the children, [B.G.] and [D.G.], and there is no reasonable expectation of improvement in parental care and protection considering the age of the children.

⁵ Kentucky Revised Statutes.

3. The Respondent [parent], for reasons other than poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the children's well-being and there is no reasonable expectation of significant improvement in parental conduct in the immediately foreseeable future, considering the age of the children.
4. The Respondent fathers have abandoned the children for a period of not less than ninety (90) days.
5. [D.G.] and [B.G.] have been in foster care under the responsibility of the Petitioner, Cabinet for Health and Family Services, for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights in this action due to the failure of the Respondent [parent] to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the children to any parent.
6. The Cabinet for Health and Family Services has rendered or attempted to render all reasonable services to the Respondent parents that might be expected to bring about a reunion of the family. Given the efforts made by the Cabinet and the Jefferson Family Court to reunify this family, no additional services are likely to bring about parental adjustments enabling a return of the children to parental custody within a reasonable time, considering the age of the children.
7. The Cabinet has met the children's physical, emotional and mental health needs since removal from parental custody and the prospects are for continuing improvement in the children's welfare if termination is ordered.

8. Petitioner, Cabinet for Health and Family Services, is entitled to a judgment terminating the parental rights of the [Respondent, J.G.], to the children, [B.G.] and [D.G.]; moreover, it is in the best interest of said children that parental rights of the [Respondent] be terminated and that custody be transferred to the Cabinet for Health and Family Services as wards of the Commonwealth with authority residing in the Cabinet to place the children for adoption.
9. The Court has considered evidence pertaining to each enumerated ground in the Cabinet's Petition for Involuntary Termination of Parental Rights and has determined by clear and convincing evidence that the Cabinet has met the burden of proving each ground independently of one another. Each individual ground for termination found in this action is sufficient for termination of parental rights pursuant to KRS 625.090.

J.G. timely appealed termination of her parental rights claiming there was insufficient evidence to establish the three-pronged test set out in KRS 625.090. We disagree and affirm.

To grant a petition for involuntary termination of parental rights under KRS 625.090, a trial court must have clear and convincing evidence of three elements: that the children are abused or neglected as defined in KRS 600.020(1); that one or more of the grounds stated in KRS 625.090(2) exists; and that termination would be in the best interest of the children. See *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *N.S. v. C. and M.S.*, 642 S.W.2d 589 (1982). There is no requirement the evidence be uncontradicted, only that it be of sufficient "probative and substantial nature . . . to convince ordinarily prudent-minded people." *V.S. v. Commonwealth*,

Cabinet for Human Resources, 706 S.W.2d 420, 424 (Ky.App. 1986) quoting *Rowland v. Holt*, 253 Ky. 718, 70 S.W.2d 5, 9 (1934); See also *Cabinet for Families and Children v. G.C.W.*, 139 S.W.3d 172, 175 (Ky.App. 2004); *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-117 (Ky.App. 1998). As an appellate Court, we will review the trial court's fact findings for clear error under CR⁶ 52.01 and will affirm those findings unless "there exists no substantial evidence in the record to support them. *V.S., supra*, 706 S.W.2d at 424. Contrary to J.G.'s claims, the trial court made the required findings and all three statutory elements were supported by clear and convincing evidence.

Were the children abused or neglected?

The Jefferson Circuit Court, Family Division, a court of competent jurisdiction, adjudged B.G. and D.G. to be abused or neglected children after an adjudicatory hearing held on February 17, 2005. The Cabinet presented clear and convincing evidence that B.G.'s father has neither visited nor contacted her since May 2006. D.G.'s father has never visited or contacted him. Furthermore, neither man has contacted the Cabinet to inquire about his child for a period of not less than ninety days. Hence, the fathers have abandoned the children, thus satisfying the definition of an abused or neglected child under KRS 600.020(1)(g).

There was also proof that J.G. "engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs" of her children; has consistently

⁶ Kentucky Rules of Civil Procedure.

failed "to provide essential parental care and protection" for her children; did not provide her children "adequate care, supervision, food, clothing, shelter, and education or medical care," and failed "to make sufficient progress toward identified goals" that would permit her to reunite with her children such that B.G. and D.G. have remained in foster care for the last fifteen of the most recent twenty-two months. KRS 600.020(1) (c), (d) (g) (h) and (i). Specifically, J.G. has not had regular contact with her children or with the Cabinet and has not maintained steady employment and stable housing. J.G. kicked and attempted to burn B.G. with a cigarette. During a visitation session, J.G. badgered B.G. about whether someone had hurt her to the point that the child curled into a ball and hid under a couch. Once J.G. brought a bag of items for B.G. but it contained inappropriate clothing such as an adult size dress. The first element required for termination of parental rights, proof of abuse or neglect, was established by clear and convincing evidence.

Was termination supported by at least one statutory ground?

Termination must be supported by at least one of the ten grounds enumerated in KRS 625.090(2). Proof of at least four of the grounds was offered in this case. There was evidence the children had been abandoned by a parent for "not less than ninety (90) days," KRS 625.090(2) (a); that J.G. "for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and

protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child," KRS 625.090(2)(e); that J.G., "for reasons other than poverty alone, has continuously or repeatedly failed or refused to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child, KRS 625.090(2)(g); and, B.G. and D.G. have "been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights," KRS 625.090(2)(j). Again, just the time the children have spent in foster care is sufficient to satisfy this prong of the statute. However, the circuit court had far more evidence upon which to base its decision. Thus, the second element of the three-pronged test was satisfied clearly and convincingly.

Was termination in the children's best interest?

The third and final element is whether terminating parental rights would be in the best interests of the children. Doty's testimony established both children are thriving in foster care. For example, when B.G. entered foster care she was seeing a therapist weekly because she was pulling out her hair and eating non-food items. She has now ceased doing both of these and no longer requires counseling. There are no concerns

with D.G.'s development. While the children have been placed in separate homes, they enjoy monthly sibling visitation. Both foster homes are amenable to adoption and are willing to maintain the sibling bond. Doty testified she did not foresee J.G. being able to care for her children in the near future.

In determining what is in B.G.'s and D.G.'s best interests, KRS 625.090(3)(a) specifically directs the circuit court to consider whether J.G.'s mental illness since it precludes her from caring for her children's needs for extended periods of time. Dr. Cynthia Gawarecki at Seven Counties Services began seeing J.G. in June 2005. At that time she diagnosed J.G. with "impulse control disorder - not otherwise specified, history of alcohol abuse, and borderline traits versus borderline personality disorder." Dr. Gawarecki said she agreed with a psychological and parenting capacity exam of J.G. dated January 5, 2006. That exam indicated J.G. lacks prosocial skills, has interpersonal difficulties and exhibits distortions in thinking (paranoia). J.G. denies she suffers from any of these problems. Her denial impedes her ability to improve her situation. In light of Dr. Gawarecki's diagnosis, J.G.'s mental state and ability to parent must be considered. *G.E.Y. v. Cabinet for Human Resources*, 701 S.W.2d 713 (Ky.App. 1985).

J.G. has been involuntarily hospitalized five times in her life, most recently October 31, 2004, through November 16, 2004, and again November 30, 2004, through December 8, 2004. Clearly she could not care for her children during her hospitalization and when not hospitalized she appears

indifferent toward her children. For example, when B.G. was missing, rather than looking for her, J.G. sat at a table drinking coffee and smoking a cigarette.

KRS 625.090(3)(b) also directs the circuit court to consider whether J.G. has abused or neglected any child in her family. As noted previously, J.G. kicked and attempted to burn B.G. with a cigarette.

The circuit court must also consider whether the Cabinet has made reasonable efforts to reunite J.G. with her children and whether J.G. has tried to alter her "circumstances, conduct, or conditions to make it in [B.G.'s and D.G.'s] best interest to return" to her home. KRS 625.090(3)(c) and (d). The record shows the Cabinet has offered numerous services to J.G. in an attempt to reunite her with her children. In contrast, other than attending parenting classes, J.G. appears to have done little to regain her children. She has not worked since early 2006, preferring instead to rely upon the disability check she began receiving in December 2006. She does not cooperate with the Cabinet. She does not take her prescribed medication. Rather than acknowledging she has problems and addressing them, she attributes all flaws to the Cabinet, counselors who provide poor care, nosy neighbors, her mean mother, and vindictive acquaintances who report her to the authorities. In light of the foregoing and the record as a whole, we agree with the trial court's decision that termination was indeed in the best interests of the children.

For the foregoing reasons, the orders of the Jefferson
Circuit Court, Family Division, are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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